WONG KAI WOON & ANOR.

v.

WONG KONG HOM & ORS.

HIGH COURT, SINGAPORE
S RAJENDRAN JC
[ORIGINATING SUMMONS NO. 709 OF 1989]
10 JANUARY 1991

SUCCESSION: *Construction of will - Testator's domicile at time of making will - Entitlement and rights of legatees and children -* ***Per capita*** *or* ***per stirpes*** *- Power of trustees to sell property - Right of illegitimate children to share in the estate.*

The plaintiffs were trustees (the trustees) of the will of one Wong Yoon Fee (W), the testator, appointed under an order of Court dated 1 August 1980. The plaintiffs applied under the present construction summons for determination of the following questions:

(a) whether the sons of the testator have any interest in or right to share in the residuary estate;

(b) whether the distribution of the gift of the residuary estate is intended to be made *per capita* or *per stirpes*;

(c) whether the plaintiffs as trustees of the will have the power to sell certain properties.

Counsel for the trustees also applied for a ruling on:

(d) whether illegitimate children have a right to share in the residuary estate; and

(e) what would be the entitlement (if any) to the residuary estate of any member of the class who dies before the closing of the class.

At the hearing, Counsel for the 11th to 14th defendants:

(i) challenged the probate copy of the will;

(ii) disputed the forum; (as the landed properties were situate in Johore, Malaysia)

(iii) sought the removal of the trustees on grounds that they had committed breaches of trust.

Held:

[1] At the hearing of a construction summons in the instant case, it was not appropriate to challenge the grant of probate nor seek removal of the trustees. Therefore issues (i) and (iii) above were dismissed.

[2] In the absence of indications to the contrary, a will is to be interpreted in accordance with the law of the testator's domicile at the time the will was made. The fact that the residuary estate consisted of landed properties situated in Malaysia, a different jurisdiction, does not alter this general rule. In the instant case, the testator was domiciled in Singapore at the relevant time and there was no indication in the will that it was to be interpreted by some other law or in some other jurisdiction. The proceedings were therefore properly instituted in Singapore.

[3] It was clear from the provisions of the will that it was the specified grandchildren of the testator who were to share in the capital of the residuary estate. Accordingly, the sons of the testator had no interest or share in the residuary estate.

[4] *Prima facie*, a distribution made by a donor under a gift would be *per capita* and not *per stirpes* unless there were indications by the donor to the contrary. In the instant case, clause 13 (which provided that the children of 'each' of the testator's sons were to take 'one share or one share between them in equal shares') and clause 12 (which provided that where any one of the testator's sons dies, the sons of that son shall take, if more than one, in equal shares the share of the income of the testator's son who died) showed the intention of the testator that the distribution to the grandsons was to be *per stirpes*. Accordingly, the distribution was to be *per stirpes*.

[5] It was the clear intention of the testator that after the postponement period, the residuary estate was to be distributed in accordance with the directions given in the will. As the postponement period was now over, the trustees had powers of sale over the residuary estate. This was consistent with the earlier ruling where by order of Court dated 7 August 1981 Wee Chong Jin CJ ordered that the trustees of the estate of W be authorsed to sell the properties comprised in the residuary estate.

[6] Clause 13 of the will provided that the residuary estate was to be divided among the 'lawful natural and/or adopted sons' of the testator's sons. The question whether illegitimate children had a right to share in the estate would have to depend on whether the word 'lawful' was used to qualify the words 'natural and/or adopted sons' or whether the word was used as an alternative to the word 'natural'. In the instant case, the word 'lawful' qualified the words 'natural' and/or adopted sons' and the word 'natural' had been used by the testator in contradistinction to the word 'adopted'. Accordingly, only legitimate children were to share in the residuary estate.

[7] It cannot be implied that the residuary estate should be distributed only to specified grandchildren living on the closing of the class on 18 September 1974. Since there was nothing in the will to suggest otherwise, the class of beneficiaries of the residuary estate included the estates of beneficiaries who died before 18 September 1974.

[Order accordingly.]

[**Editor's Note:** The 11th to 14th defendants have appealed to the Court of Appeal vide Civil Appeal No. 99 of 1990]

Other sources referred to:
Conflict of Laws, Dicey and Morris, 11th Edn. pp. 1022, 1024
The Law of Wills, Williams, pp. 553, 655

For the plaintiffs - Vangat Ramayah
For the 1st and 7th defendants - Chan Kok Chye
For the 4th and 6th defendants - Tan Bee Hoon
For the 5th defendant - Ling How Doong
For the 9th defendant - Wee Han Kim
For the 11th, 12th, 13th and 14th defendants - Chiam See Tong

JUDGMENT

S Rajendran JC:

The plaintiffs were the trustees (the trustees) of the will dated 12 August 1925 (the will) of one Wong Yoon Fee (the testator). In this construction summons the plaintiffs sought, *inter alia*, the determination of the following questions:

(a) whether the sons of the testator have any interest in or right to share in the residuary estate;

(b) whether the distribution of the gift of the residuary estate is intended to be made *per capita* or *per stirpes*; and

(c) whether the plaintiffs as trustees of the will have the power to sell the properties set forth in the Schedule.

At the hearing Mr. Ramayah, Counsel for the trustees, also applied to the Court for a ruling on the following two additional matters:

(d) whether illegitimate children have a right to share in the residuary estate; and

(e) the entitlement (if any) to the residuary estate of any member of the class who dies before the closing of the class.

The testator had died on 24 May 1926. On 25 June 1926 probate of the will was granted by the Supreme Court of the Straits Settlements (Settlement of Singapore) in Probate No. 232/26 to Wong Yeen Yong, one of the executors named in the will, with leave granted to Wong Foo Yong, the other executor named in the will, to come in and prove the will, which he did in Double Probate No 353/33. Under the will the date of distribution of the residuary estate was to be 20 years after the death of the last surviving wife. The last surviving wife of the testator died on 18 September 1954. The plaintiffs were by order of Court dated 1 August 1980 appointed trustees of the will.

At the hearing, Mr. Chiam See Tong, Counsel for the 11th to 14th defendants, raised the following preliminary issues:

(i) he challenged the probate copy of the will;

(ii) he disputed the forum; and

(iii) he sought the removal of the trustees on grounds that they had committed breaches of trust.

These proceedings were instituted by the trustees for the purpose of construing the will in respect of which probate had been granted. If any party wished to challenge the grant it would not, in my view, be appropriate to do so at the hearing of a construction summons such as this. Similarly, it was not appropriate to seek the removal of the trustees in the present proceedings. I therefore dismissed preliminary issues (i) and (iii) raised by Mr. Chiam.

On preliminary issue (ii), Mr. Chiam did not dispute that the testator was domiciled in Singapore and that the will was executed in Singapore. He pointed out, however, that the residuary estate consisted of landed properties and that these were all situate in Johore. He submitted that Malaysian law would apply to all these landed properties and that accordingly the will would have to be construed by the Malaysian Courts in accordance with Malaysian law. Mr. Chiam drew the attention of the Court to the fact that there were pending proceedings in the High Court of Malaya at Johore Bahru (OS No. 24-235-1989) dealing with essentially the same subject matter as the present proceedings. The Malaysian proceedings had been instituted on 18 March 1989 against the trustees by Huang Foo Yung @ Wong Foo Yong (now deceased but whose estate is the 13th defendant in the present proceedings), Huang Yan Teo (12th defendant) and Wong Lum Leong (11th defendant). The trustees had applied to strike out those proceedings. Mr. Chiam claimed that the application (to strike out) had been dismissed with costs by the Johore Court. Mr. Ramayah disputed this and claimed that the Johore Court had in fact stayed the proceedings before it pending the hearing in the Singapore Courts of the present action. Neither side however produced any order of the Malaysian Court to substantiate their respective claims.

It is established law that a will is to be interpreted in accordance with the law intended by the testator. In the absence of indications to the contrary, the law is presumed to be the law of his domicile at the time when the will is made (see Dicey and Morris: *Conflict of Laws* 11th Edn. at p. 1022). In the present case, it is not disputed that the testator was domiciled in Singapore at the relevant time and there is no indication in the will that it is to be interpreted by some other law or in some other jurisdiction. The fact that the property consisted of immovables situated in a different jurisdiction does not alter the general rule (see Dicey and Morris at p. 1024). I was therefore satisfied that these proceedings were properly instituted in Singapore and that this Court had jurisdiction to construe the will. Accordingly, I also dismissed preliminary issue (ii) raised by Mr. Chiam and proceeded to consider the matters of construction of the will that had been raised.

Whether the Sons of the Testator have an Interest in the Residuary Estate

The relevant clause in the will was as follows:

> And upon trust that my trustees shall at the expiration of the said period of twenty years after the death of my last surviving wife, divide my residuary estate among the lawful natural and/or adopted sons of my sons and my said adopted son, the lawful natural and/or adopted son or sons of each of my sons and said adopted son taking one share or one share between them in equal shares.

Under the above clause (which I will for convenience refer to as Clause 13), it is clear that the residuary estate is to be 'divided' 'among' the specified sons of the testator's sons and adopted son. No interest is given under the clause to the sons and adopted son of the testator. Mr. Chiam submitted that a subsequent clause (which I will refer to as Clause 15) made it clear that the testator intended his sons to share in the residuary estate. Clause 15 with the material words emphasized by me was as follows:

> I direct and declare that if any of my sons or said adopted son shall attempt by legal proceedings to obtain a division of my residuary estate before the expiration of the said period of twenty years after the death of my last surviving wife, I revoke totally the abovementioned gifts to him and to his lawful natural and/or adopted sons of a share in my residuary estate and the income thereof and he shall have no further interest in or claim whatsoever in respect of my residuary estate or the income thereof but my trustees shall be at liberty to pay to him the sum of Dollars Two Thousand ($2,000).

Mr. Chiam submitted that the reference in Clause 15 to 'the abovementioned gifts ... of a share in my residuary estate and the income thereof' made it clear that the testator intended the sons to share in the residuary estate.

Under earlier clauses in the will (which I will refer to as Clause 5, 11 and 12), the testator had made specific gifts to his sons and adopted son. Under Clause 11 and 12 the testator had made a gift of specified income from the residuary estate to his sons and adopted son. Under Clause 5 the testator had made a specific gift to one of his sons. In my view, the words, 'abovementioned gifts' in Clause 15 refer to the gifts specifically made under these earlier clauses and the reference to 'a share in the residuary estate and to the income thereof' in Clause 15 is no more than a general reference to the gifts to the sons (in Clause 5, 11 and 12) and the gifts in Clause 13 made to the grandsons.

The provisions of the will on this matter were in my view quite clear. It was the specified grandchildren of the testator who were to share in the capital of the residuary estate. I accordingly ruled that the sons and adopted son of the testator had no interest in or right to share in the capital of the residuary estate.

Whether the Distribution of the Residuary Estate is Intended to be made Per Capita or Per Stirpes

Where a gift is made to a number of donees, the distribution may be intended to be made *per capita* or *per stirpes*. *Prima facie* the distribution would be *per capita* and not *per stirpes* unless there are indications by the donor to the contrary (Williams: *The Law of Wills* at p. 655). In the present case, Clause 13 of the will provides in respect of the distribution of the residuary estate that the children of 'each' of the testator's sons is to take 'one share or one share between them in equal shares'. This in my view is a clear indication that the distribution is to be *per stirpes*. Again Clause 12 provides that if any of the testator's sons dies, the sons of that son shall take, if more than one, in equal share the share of the income of the testator's son who has died. This again shows that the intention of the testator was that the distribution to the grandsons was to be *per stirpes*. Accordingly, on this question I ruled that the distribution was to be *per stirpes*.

Whether the Trustees have Power to Sell the Properties

Under the will, the residuary estate was vested in the trustees and they were directed to stand possessed of and manage the same during the lifetime of the testator's wives and the period of 20 years from the death of the last surviving wife with power to carry on the testator's business but without power to do any other businesses and without power to sell or otherwise to dispose of the residuary estate. It was the clear intention of the testator that after the postponement period, the residuary estate was to be distributed in accordance with the directions given in the will. That being so, I ruled that since the postponement period was now over, the trustees had powers of sale over the residuary estate. Such a ruling appears to have already been made in Originating Summons No. 310 of 1980 wherein by order of Court dated 7 August 1981, Wee Chong Jin CJ ordered that the trustees of the estate of Wong Yoon Fee be authorized to sell the properties (comprised in the residuary estate) by public auction with reserve prices to be fixed by the Registrar.

Whether Illegitimate Children have a Right to Share

Clause 13 of the will provides that the residuary estate is to be divided among the 'lawful natural and/or adopted sons' of the testator's sons. The question to be decided was whether the word 'lawful' was used to qualify the words 'natural and/or adopted sons' or whether the word was used as an alternative to the word 'natural'. In the context, I was of the view that the word 'lawful' qualified the words 'natural and/or adopted sons' and the word 'natural' had been used by the testator in contradistinction to the word 'adopted'. Accordingly, I ruled that it was the testator's intention that only legitimate children were to share in the residuary estate.

Whether any member of the class entitled to the residuary estate who dies before the closing of the class (18 September 1974) has a vested right as a member of the class.

Mr. Ramayah submitted that any member of the class who dies before the closing of the class has a vested right in the estate and that his estate would be within the class to whom distribution must be made. In support of this proposition he quoted Williams: *The Law of Wills* at p. 553 where under the heading 'Effect of death before testator or distribution' it is said:

> As regards members of a class taking under a postponed gift, the death of one of them who has survived the testator before the period of distribution does not defeat his interest provided that the contingency of surviving that period is not part of the description of the class.

The will did not provide for such a contingency. Mr. Wee Han Kim, Counsel for the ninth defendant, submitted that the residuary estate should be distributed only to the specified grandchildren living on 18 September 1974 and he invited the Court to imply such a term. I was not prepared to do so. As there was nothing in the will to suggest otherwise, I held that the class of beneficiaries of the residuary estate included the estates of beneficiaries who died before 18 September 1974.

Also found at [1991] 3 CLJ 3057